

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS RANDY VASQUEZ		DEFENDANTS NCO FINANCIAL SYSTEMS, INC.																	
(b) County of Residence of First Listed Plaintiff _____		County of Residence of First Listed Defendant _____																	
(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)		<small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</small>																	
Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888		Attorneys (If Known)																	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																	
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6																	
IV. NATURE OF SUIT (Place an "X" in One Box Only)		CONTRACT TORTS FORFEITURE/PENALTY BANKRUPTCY OTHER STATUTES																	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other		PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		PROPRIETE RIGHTS <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157									
CIVIL RIGHTS		PRISONER PETITIONS		LABOR		SOCIAL SECURITY		FEDERAL TAX SUITS		OTHER STATUTES									
<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes									
V. ORIGIN (Place an "X" in One Box Only)		<input type="checkbox"/> 1 Original Proceeding		<input type="checkbox"/> 2 Removed from State Court		<input type="checkbox"/> 3 Remanded from Appellate Court		<input type="checkbox"/> 4 Reinstated or Reopened		<input type="checkbox"/> 5 Transferred from another district (specify)		<input type="checkbox"/> 6 Multidistrict Litigation		<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment					
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C SECTION 1692																	
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND \$		CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No													
VIII. RELATED CASE(S)		(See instructions): JUDGE _____ DOCKET NUMBER _____																	
Explanation: _____																			

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

RANDY VASQUEZ : CIVIL ACTION
: :
v. : :
: :
NCO FINANCIAL SYSTEMS, INC. : :
: NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. ()

09/11/2012
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Randy Vasquez
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5038 Meaning Ln, Corpus Christi, TX 78413

Address of Defendant: 507 Prudential Rd, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts

2. FELA

2. Airplane Personal Injury

3. Jones Act-Personal Injury

3. Assault, Defamation

4. Antitrust

4. Marine Personal Injury

5. Patent

5. Motor Vehicle Personal Injury

6. Labor-Management Relations

6. Other Personal Injury (Please

specify)

7. Civil Rights

7. Products Liability

8. Habeas Corpus

8. Products Liability — Asbestos

9. Securities Act(s) Cases

9. All other Diversity Cases

10. Social Security Review Cases

(Please specify)

11. All other Federal Question Cases 5 U.S.C. § 1609
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel

, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 9/11/12

/s/ Craig Thor Kimmel

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 9/11/12

/s/ Craig Thor Kimmel

Attorney-at-Law

57100

Attorney I.D.#

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

RANDY VASQUEZ (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has its corporate headquarters in the Commonwealth of Pennsylvania. As such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Corpus Christi, Texas 78413.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Defendant is a national debt collection company with its corporate headquarters at 507 Prudential Road, Horsham, Pennsylvania 19044.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

11. Defendant collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail, telephone and/or internet.

12. The debt Defendant was seeking to collect, a Sallie Mae student loan, arose out of transactions that were primarily for personal, family, or household purposes.

13. Over the past several years, Defendant had been contacting Plaintiff about the alleged debt.

14. During this period, Plaintiff made payments on the debt, most recently making a payment on July 17, 2012. Plaintiff believed that he had paid the alleged debt in its entirety.

15. Then, starting on or around July 15, 2012, Defendant began to increase the frequency of its calls to Plaintiff.

1 16. Specifically, Defendant continuously and repeatedly contacted Plaintiff on his
2 cellular and work telephones seeking and demanding of \$1,475.00.

3 17. Defendant contacted Plaintiff, on average, six (6) to seven (7) times a day, in its
4 attempts to collect a debt.

5 18. As a result of Defendant's continuous and repeated telephone calls, Plaintiff
6 received more than ten (10) collection calls a week.

7 19. Plaintiff knew it was Defendant calling because his caller-id displayed "NCO
8 Financial," and, in those instances when he answered the telephone, Defendant identified itself
9 as "NCO Financial."

10 20. Also, Plaintiff recalls speaking to one of Defendant's debt collectors, who
11 identified herself to him as "Marla" or "Marlene."

12 21. During this conversation, she threatened to garnish Plaintiff's wages if he did not
13 make an immediate payment on the debt.

14 22. Upon information and belief, Defendant made such threats to Plaintiff lacking
15 any legal authority and/ or the intent to take such action at the time it made such threats; rather,
16 Plaintiff hoped that its threats to garnish his wages would scare Plaintiff into making a payment.

17 23. Further, when Plaintiff informed Defendant it could not make the payment on the
18 debt, Defendant's collector offensively stated, "You can get the money from out your butt."

19 24. In furtherance of its attempts to harass Plaintiff, Defendant called Plaintiff at
20 times when it was inconvenient for him to receive debt collection calls, specifically calling him
21 at 7:30 a.m.

22 25. Further, Defendant called Plaintiff at places where it was inconvenient for him to
23 receive collection calls, specifically calling him at work.

26. Plaintiff is a respiratory therapist and works with patients all day; therefore, he is unable to receive personal calls at work.

27. On more than one occasion, Plaintiff informed Defendant that he was not allowed to receive personal calls at work and to stop calling him at work.

28. Defendant, however, failed to update its records to avoid the further harassment of Plaintiff. Instead, Defendant continued to call Plaintiff at his place of employment in its attempts to collect a debt.

29. Lastly, in one of his telephone conversations with Defendant, Plaintiff requested that Defendant provide written verification of the alleged debt, as Plaintiff believed that he had paid the debt in full and Defendant was now claiming that Plaintiff owed an additional \$1,487.00 as a result of a computer error.

30. Rather than sending Plaintiff a list of all of his payments, Defendant simply sent Plaintiff a letter stating that a balance of \$1,487.00 remained.

31. Defendant's response did not assist Plaintiff in determining whether the alleged amount due and owing had been properly calculated.

**DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT**

COUNT I

32. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692c(a)(1) and 1692c(1)(3).

a. A debt collector violates §1692c(a)(1) of the FDCPA by communicating with a consumer at an unusual time or place or a time or place known or which should be known to be inconvenient, prohibiting a debt collector from contacting a consumer before 8:00 a.m. and after 9:00 p.m.

- b. A debt collector violates §1692c(a)(3) of the FDCPA by contacting a consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.
- c. Here, Defendant violated §§1692c(a)(1) and 1692c(a)(3) of the FDCPA when contacted Plaintiff at 7:30 a.m., and continuously and repetitively contacted Plaintiff at his place of employment after having been notified that Plaintiff was not allowed to receive personal calls at work.

COUNT II

33. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692d and 1692d(5).

- a. A debt collector violates §1692d of the FDCPA by engaging in conduct of the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- b. A debt collector violates §1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.
- c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA by continuously calling Plaintiff's cellular and work telephones on an average six (6) to seven (7) times a day, with the intent to annoy, abuse, and harass Plaintiff.

COUNT III

34. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692e, 1692e(2), 1692e(4), and 1692e(10) of the FDCPA.

- a. A debt collector violates §1692e of the FDCPA by using false, deceptive or misleading representations or means in connection with the collection of any debt.
- b. A debt collector violates §1692e(2)(A) of the FDCPA by falsely representing the character, amount or legal status of any debt.
- c. A debt collector violates §1692e(4) of the FDCPA by representing or implying that nonpayment of any debt will result in the garnishment of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- d. A debt collector violates §1692e(10) of the FDCPA by using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- e. Here, Defendant violated §§1692e, 1692e(2), 1692e(4), and 1692e(10) of the FDCPA by threatening Plaintiff with garnishment without the legal authority or intent to take such action and by misstating the amount of the alleged debt.

COUNT IV

35. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692f and 1692f(1) of the FDCPA.

a. A debt collector violates §1692f of the FDCPA by using unfair or unconscionable means to collect or attempt to collect any debt.

- 1 b. A debt collector violates §1692f(1) of the FDCPA by collecting an amount
- 2 (including any interest, fee, charge, or expense incidental to the principal
- 3 obligation) unless such amount is expressly authorized by the agreement
- 4 creating the debt or permitted by law.
- 5 c. Here, Defendant violated §§1692f and 1692f(1) of the FDCPA engaging in
- 6 other unfair and unconscionable debt collection practices, including failing to
- 7 provide Plaintiff information about the payments made on the alleged debt
- 8 and collecting an amount that was not owed.

9
10 WHEREFORE, Plaintiff, RANDY VASQUEZ, respectfully prays for a judgment as
11 follows:

- 12 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- 13 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
14 15 U.S.C. § 1692k(a)(2)(A);
- 15 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
16 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 17 d. Any other relief deemed appropriate by this Honorable Court.

18
19 **DEMAND FOR JURY TRIAL**

20 PLEASE TAKE NOTICE that Plaintiff, RANDY VASQUEZ, demands a jury trial in
21 this case.

1 RESPECTFULLY SUBMITTED,
2

3 Date: 09/11/2012

4 By: /s/ Craig Thor Kimmel
5 CRAIG THOR KIMMEL
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